

Editor's note: Modified -- See Vance W. Phillips and Aelisa A. Burnham, 19 IBLA 211 (March 21, 1975)

VANCE W. PHILLIPS

AELISA A. BURNHAM

IBLA 71-274; 71-275 Supp.

Decided December 11, 1973

Petition for reconsideration of decision of March 13, 1973, affirming as modified the rejection of oil and gas lease offers F-5159 and F-5181.

Set aside and remanded.

Oil and Gas Leases: Generally: Applications--

Oil and Gas Leases: Lands Subject to

Under the policy of the Secretary of the Interior of maintaining on file oil and gas lease offers for lands in Alaska filed prior to the issuance of Public Land Order 4582 on January 17, 1969, an offer filed prior to PLO 4582 will be retained on file until such time as the lands in the offer (1) are conveyed to a Village Corporation or Regional Corporation, or (2) are classified to permit mineral leasing, as provided in the Native Claims Settlement Act and the public land order issued pursuant thereto, or (3) the offer is recalled by the applicant.

APPEARANCES: Eugene F. Wiles, Esq., of Delaney, Wiles, Moore, Hayes and Reitman, Inc., Anchorage, Alaska, for petitioners.

OPINION BY MRS. LEWIS

Vance W. Phillips and Aelisa A. Burnham have petitioned for reconsideration of the decision rendered by this Board in Vance W. Phillips, Aelisa A. Burnham, 10 IBLA 125 (1973), rejecting in its entirety each of their respective offers to lease for oil and gas certain lands in T. 7 N., R. 29 E., F.M., Alaska, filed on August 28, 1968, for the reason that all the lands in the township, among other

lands, were withdrawn by Public Land Order (PLO) 5173, 37 F.R. 5575, from all forms of appropriation under the public land laws, including the mineral leasing laws, pursuant to the authority vested in the Secretary of the Interior by the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. §§ 1601-1624 (Supp. II, 1972).

Petitioners assert that the provisions in PLO 5173 that mineral lease offers will be rejected is for prospective application only and does not affect lease offers filed prior to the issuance of PLO 4582 on January 17, 1969, 34 F.R. 1025. This PLO, they argue, expressly provided that lease offers pending before the Department on the effective date of the public land order would remain in status quo until the withdrawal was lifted or the offeror recalls his offer. They further contend that the Secretary of the Interior, since the enactment of the Alaska Native Claims Settlement Act and the issuance of PLO 5173, has made clear his intent to continue the policy of maintaining on file those lease applications submitted prior to PLO 4582. For the reasons stated below, we grant the motion for reconsideration.

We find that the Secretary's continuing policy of maintaining on file Alaska oil and gas lease offers filed prior to PLO 4582 is applicable to the instant case. Accordingly, the decision of the Board relating to the subject offers is hereby set aside and the Alaska State Office decisions concerning them are hereby vacated. The lease offers are remanded to the State Office and will remain in status quo until such time as the lands described in each offer (1) are conveyed to a Village Corporation or Regional corporation, or (2) are classified to permit mineral leasing, as provided in the Alaska Native Claims Settlement Act and PLO 5173 issued pursuant thereto, or (3) the offers are recalled by the applicant. When the subject offers are reached for consideration, if any of the lands described in the offers have been classified to permit mineral leasing, due regard will be given to the availability of those lands for leasing at the time the offers were first filed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Board in Vance W. Phillips, Aelisa A. Burnham,

10 IBLA 125 (1973), is set aside; the decisions below relating thereto are vacated; and the lease offers are remanded to the Alaska State Office, BLM, for retention on file as provided herein.

Anne Poindexter Lewis, Member

We concur:

Frederick Fishman, Member

Joseph W. Goss, Member

